EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 19, 2012

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-6175

Dear Chairman Boxer:

Thank you for your May 2, 2012 letter inquiring about the alternatives that the National Aeronautics and Space Administration (NASA) must consider for the cleanup of the Santa Susana Field Laboratory Site under the National Environmental Policy Act (NEPA) based on the existing Administrative Order on Consent, signed on December 6, 2010 (the Agreement). Your letter also asks for the views of the Council on Environmental Quality (CEQ) on how NASA and the State of California (State) can cooperate and move forward with the cleanup process. In the specific situation of NASA's cleanup of the Santa Susana site, NASA has committed under the Agreement to perform a cleanup of chemical and/or radiological contaminants in or on soils at the site to local background levels. NASA's current range of alternatives includes various other cleanup standards that do not clean up to background.

NEPA anticipates full disclosure to the public and the decision maker of the environmental effects of a project and its reasonable alternatives before a decision is made. CEQ oversees implementation of NEPA, principally through issuance and interpretation of NEPA regulations that implement the requirements of NEPA. The Supreme Court has long recognized that CEQ's interpretation of NEPA and its regulations is entitled to substantial deference. See Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 355-56 (1989); Andrus v. Sierra Club, 442 U.S. 347, 358 (1979). The CEQ regulations direct agencies first to identify the project's purpose and need and set forth the alternatives that flow from that purpose and need. 40 C.F.R. § 1502.13. The agencies should then rigorously explore and evaluate objectively all reasonable alternatives, including reasonable alternatives that may not be "within the jurisdiction of the lead agency." 40 C.F.R. § 1502.14(c).

CEQ encourages agencies to carry out robust alternatives analyses that consider all reasonable alternatives, including those that are not within agencies' authorities. The real focus, however, must always be on a meaningful consideration of alternatives. In this particular situation, where NASA has signed the Agreement and committed to a cleanup standard to background, nothing under NEPA or CEQ regulations constrains NASA from looking beyond cleanup to background, even though some may consider the analysis unnecessary and inconsistent with the agreement NASA signed with the State. However, there is no requirement that NASA consider alternatives that cleanup to other standards that differ from the agreement with the State. The Supreme Court has stated that the concept of alternatives must be bounded by some notion of feasibility, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 551 (1978), and under the specific facts of the cleanup at this time, feasibility is most sufficiently defined within the scope of cleanup to background. There would, of course, have to be a no-action alternative considered.

Indeed, as the Supreme Court has stated, "inherent in NEPA and its implementing regulations is a 'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an [Environmental Impact Statement] based on the usefulness of any new potential information to the decisionmaking process." Department of Transportation v. Public Citizen, 541 U.S. 752, 767 (2004) (citing Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 373-374 (1989)). This "rule of reason" applies equally to the identification of the purpose and need statement and the alternatives, which NASA must consider in the context of the Agreement. In view of NASA's administrative cleanup resolution with the State of California, which turns upon NASA's commitment to clean the site to local background levels, CEQ's view is that — under this rule of reason — NASA is not compelled to consider less comprehensive cleanup measures as alternatives.

As to assisting the State and NASA in moving forward cooperatively, it is fully consistent with CEQ regulations for NASA and the State to coordinate their environmental reviews to the greatest extent possible. CEQ would recommend such coordination while allowing NASA to retain the integrity of its NEPA decision making authority. CEQ would propose that the State and NASA conduct face-to-face meetings with the goal of establishing an updated cleanup timetable. During the process of working on a timetable, the State and NASA will also be able to resolve other issues, including: (1) what information, including any site characterization information, NASA and the State can provide each other to facilitate NASA's NEPA process and the State's California Environmental Quality Act (CEQA) work; (2) how the NEPA and CEQA processes will work together; (3) what the State's timeline is for the CEQA process; and (4) whether an extension for completion of the cleanup could assist in facilitating coordination among the NASA and State efforts. CEQ would be pleased to assist NASA, the State, and the Committee as appropriate in fostering this coordination.

Thank you again for your letter. CEQ shares your commitment to ensuring that the Santa Susana Field Laboratory Site is cleaned up to background pursuant to the Agreement and that its lands be enjoyed by current and future residents of the area.

Sincerely,

Nancy H. Sutley
Chair